IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Crl.MC.No. 3024 of 2004()

CC.594 OF 2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR
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PETITIONER: ACCUSED:
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1. M.MUSTHAFA, S/O. POCKER HAJI,
BEDARIYA SUPER MARKET, III-758, 768 G,
PILATHARA, CHERUTHAZHAM GRAMA PANCHAYAT,
KANNUR DISTRICT.

2. MUTTUKKARAN HAMZA HAJI, S/O.POCKER HAJI,
BEDARIYA SUPER MARKET, III-758, 768 G, PILATHARA,
CHERUTHAZHAM GRAMA PANCHAYAT, KANNUR DISTRICT.

3. MUTTUKKARAN MUHAMMADALI HAJI,
S/O. MUHAMMED KUNHI, BEDARIYA SUPER MARKET,
III-758, 768 G, PILATHARA, CHERUTHAZHAM GRAMA
PANCHAYAT, KANNUR DISTRICT.

4. G.VIJAYA CHANDRAMENON (NOMINEE OF
M.V.J. FOODS INDIA PVT. LTD.), SINDHU VIHAR,
DESOM P.O., ALUVA-683 103.

5. M.V.J. FOODS INDIA PVT. LTD.,
REGISTERED OFFICE, H.B.NO.7, PANAMPALLY NAGAR,
KOCHI-36, REPRESENTED BY G.VIJAYA CHANDRAMENON.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: COMPLAINANT AND STATE:
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1. FOOD INSPECTOR,
KANNUR CIRCLE, CHERUTHAZHAM GRAMA PANCHAYATH,
KANNUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/07/2007, ALONG WITH CRMC NO. 3402 OF 2004 CRMC NO. 3450 OF 2004 CRMC NO. 353 OF 2005 CRMC NO. 379 OF 2005 CRMC NO. 2267 OF 2005 CRMC NO. 2269 OF 2005 CRMC NO. 3640 OF 2005 CRMC NO. 3642 OF 2005 THE COURT ON 20-07-2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.M.C. Nos. 3024 of 2004, 3402 of 2004 and 3450 of 2004, 353 of 2005, 379, 2267, 2269, 3640 and 3642 of 2005

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Dated, this the 20th day of July 2007

ORDER

In these petitions filed under Section 482 Cr.P.C., the petitioners who are the accused in C.C. Nos. 594 of 2003 on the file of the J.F.C.M., **Payyannur**, S.T. No. 1947 of 2003 on the file of the J.F.C.M-II, **Ernakulam**, C.C. No. 664 of 2003 on the file of the J.F.C.M., **Kunnamkulam**, C.C. 62 of 2004 on the file of the J.F.C.M., Chavakkad, **Thrissu**r, S.T. No. 5419 of 2003 on the file of the J.F.C.M.-I, **Thrissur**, C.C. 651 of 2003 on the file of the J.F.C.M.-II, **Thiruvananthapuram** , S.T. 670 of 2003 on the file of the Chief Judicial Magistrate, **Thrissur**, S.T. 6210 of 2003 on the file of the J.F.C.M., **North Paravur** and C.C. 546 of 2004 on the file of the J.F.C.M.-III, **Kottayam**, seek to quash Annexure A complaints pending before the aforementioned courts.

2. The accused in each of theese cases are comprised of M.V. J. Foods India Limited which is a manufacturer of curry power

and allied products under the brand name "Melam" having I.S.O. certification besides other international quality standards. The other accused persons are the nominees of the manufacturer, licensee who supplied the food articles in question to the seller, the licensee of the seller, salesman employed by the seller etc. The food articles involved in these proceedings are sambar power, chicken massala, turmeric powder and mutton meat massala. The petitioners were prosecuted by the food inspectors concerned for an offence punishable under Sec. 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "P.F.A. Act" in short) inter alia for the alleged contravention of Sections 7(i) and (ii) of the Prevention of Food Adulteration Act, 1954 read with the Rules alleging that the food articles in question did not conform to the standards of the quality prescribed by the Rules.

3. The following synoptic resume in tabular form gives a conspectus of the prosecution case, the findings of the public analyst and the findings of the Central Food Laboratory:-

4. After the receipt of the report of the public analyst the accused exercised their right under Sec. 13 (2) of the Act resulting in the issuance of the certificate of the Central Food Laboratory. As per sub section (3) of Sec. 13 of the Act the Certificate issued by the Central Food Laboratory supersedes the report given by the public analyst. As per the certificate of the Central Food Laboratory, the only contravention which survives is the infraction of R. 42 (ZZZ) (17) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the P.F. A. Rules).

5. Rule 42 (ZZZ) (17) reads as follows:

42. Form of labels:

"(ZZZ) (17) Every package of Vegetarian Food shall bear the following symbol in green colour on the principal display panel just close in proximity to name or brand name of the Food, namely:-

6. There is no allegation in the complaints that the accused had contravened R. 42 (ZZZ) (17) of the P.F.A. Rules.

Going by the certificate of the Central Food Laboratory, the packets of curry powder involved in these cases do not bare the green dot indicating that the contents thereof are vegetarian food. In the first place, the amendment insisting on such a green dot on the wrappers came into effect only on 20-6-2002. Secondly, according to the petitioners the food packets in question were despatched from their factory without being aware of the above amendment and now those packets are beyond their control since they have already reached the hands of the retailers or customers and it not now be possible for them to get back the packets and supply the omission with a view to comply with the aforesaid Rule. The learned counsel for the petitioners submitted that as soon the petitioners came to know of the amendment they have started printing the label on their packets and presently nobody can complain of infraction of the above Rule. Such being the position, it will be an abuse of the process of the court to prosecute the petitioners on the basis of Annexure A complaints which do not allege the contravention of Rule 42(ZZZ) (17) of the P.F.A. Rules. The learned Single Judge of this Court had already taken a similar

view in the order dated 20-11-2006 in Crl.M.C. No. 3095 of 2004. This Court has again taken a similar view in the common order dated 16-7-2007 in Crl.M.C. No. 3096 of 2004 and connected matters. Resultantly, Annexure A complaints in each of the above cases and the consequential proceedings initiated before the respective Magistrate Courts are quashed.

In the result, these Crl.M.Cs are allowed as above.

**V. RAMKUMAR,
(JUDGE)**

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